



## UNITED STATES COMMISSION ON CIVIL RIGHTS

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November 18, 2015

The Honorable Donald B. Verrilli, Jr.  
Solicitor General  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Solicitor General Verrilli,

We write on behalf of the majority of members of the U.S. Commission on Civil Rights. The Commission is a bipartisan organization, comprised of part-time Commissioners. Recently, two Commissioners submitted an amicus brief to the Supreme Court in favor of the Petitioner in Fisher v. University of Texas. While the two Commissioners' brief was written in their personal capacity, the caption on the brief was titled "Brief Amicus Curiae of Gail Heriot and Peter N. Kirsanow, Members of the United States Commission on Civil Rights in Support of Petitioner." The corresponding public docket entry says "Brief Amici Curiae of Gail Heriot and Peter N. Kirsanow, Members of the United States Commission on Civil Rights filed."<sup>1</sup> The amicus brief does not represent the views of the Commission as a whole, or the majority of the Members on the Commission. As discussed below, the Commission is concerned about the potential for the public to misinterpret the public docket and conclude that the Commission supports the Petitioner in the case. Accordingly, the Commission requests that your office contact the Supreme Court Clerk and ask that the public docket delete the reference to the individuals' position on the Commission, i.e., delete "Members of the U.S. Commission on Civil Rights" from the public docket.

The Commission's primary concern is that the use of the Commissioners' association with the Commission in the public docket could mislead the public into concluding that the Commission supports the Petitioner. Likewise, in order to determine whether the entire Commission supports the amicus brief based on only the public docket requires additional information. In the brief, the two Commissioners properly state that they submitted the brief in their individual capacity. At the same time, the public docket reflects that the United States supports the Respondent in the case. As the Commission is part of the United States government, the two docket entries are in tension and confusing to a member of the public.

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<sup>1</sup> Of note, Commissioners Heriot and Kirsanow used the same caption in their earlier amicus brief at the petition for certiorari stage though the public docket says "Brief Amici Curiae of Gail Heriot and Peter Kirsanow filed."

The Commission is charged with providing accurate information to the public on civil rights issues. 42 U.S.C. § 1975a. The Commission takes this responsibility seriously. Additionally, both the Government Accountability Office and the Office of Government Ethics have previously commented on the misuse of title by members of the Commission. See GAO Report 15-92, U.S. Commission on Civil Rights, Management Improvements Are Needed to Better Achieve Its Mission (February 2015) at 19-23 (discussing that the misuse of letterhead by individual Commissioners has confused external organizations and jeopardized the Commission's effectiveness); see also U.S. Office of Government Ethics Program Review Report No. 15-04, U.S. Commission on Civil Rights (November 2014) at 17-18 (noting that a "Commissioner cannot use his/her official title, the agency seal, agency letterhead or otherwise leave a third party to think that the speaking or writing has the sanction of the Commission.").

In conclusion, the undersigned Commissioners respectfully request that your office contact the United States Supreme Court Clerk to clarify the public docket and remove the "Members of the U.S. Commission on Civil Rights."

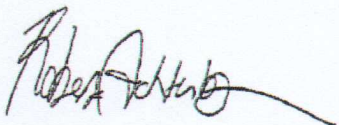
Thank you for your attention to this matter,



Martin R. Castro, Chairman



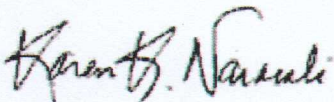
Patricia Timmons-Goodson, Vice Chair



Roberta Achtenberg, Commissioner



David Kladney, Commissioner



Karen Narasaki, Commissioner